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*The Commonwealth of Massachusetts*  
*Executive Office of Public Safety and Security*  
*Fire Safety Commission*

*Automatic Sprinkler Appeals Board*

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JOHN J. MAHAN  
CHAIRMAN

MAURICE PILETTE  
VICE CHAIR

**Docket # 2010-02**  
**96 Railroad Street**  
**Abington, Massachusetts**

**AUTOMATIC SPRINKLER APPEALS BOARD DECISION**

**A) Statutory and Regulatory Framework**

This is an administrative appeal hearing held in accordance with Massachusetts General Laws, Chapter 30A; Chapter 148, section 26 H and Chapter 6, section 201, to determine whether to affirm an Order of the Abington Fire Department requiring Charles Carchedi, (hereinafter referred to as the "Appellant") to install automatic sprinklers in a building owned by him located at 96 Railroad Avenue, Abington, MA.

**B) Procedural History**

By written notice dated January 14, 2010 and received by the Appellant on January 14, 2010, the Town of Abington Fire Department issued an Order of Notice to the Appellant informing him about the provisions of M.G.L. c. 148, s. 26H, and the Department's determination to require the installation of automatic sprinklers in the Appellant's building, located at 96 Railroad Avenue, Abington, MA. The Appellant filed an appeal of said Order with this Board on January 28, 2010. The Board held a hearing on this matter on May 12, 2010, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant was Charles Carchedi. Appearing on behalf of the Abington Fire Department was Chief Arthur H. Pelland and Deputy Chief John A. Weckbacher.

Present for the Board were: John Mahan, Chairman; Maurice M. Pilette, Vice Chairman; Frank Kodzis; Thomas Coulombe; Alexander MacLeod; and Aime DeNault. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

**C) Issue(s) to be Decided**

Whether the building located at 96 Railroad Avenue, Abington, MA, is subject to the automatic sprinkler requirements of M.G.L c.148, s. 26H?

**D) Evidence Received**

1. Application for Appeal filed by Appellants
2. Statement in Support of Appeal
3. Order of Notice of the Abington Fire Department
4. Google Map of distance between the Abington Fire Dept. and 96 Railroad Street
5. Photographs of the property, inside and out, 2 pages (listed 5A and 5B)
6. 1<sup>st</sup> Notice of Hearing to the Parties
7. Copy of e-mail correspondence between Parties and Board re: joint request to postpone hearing until May 2010
8. 2<sup>nd</sup> Notice of Hearing to the Appellant
9. 2<sup>nd</sup> Notice of Hearing to the Abington Fire Department
10. Copies of two Memoranda that accompanied the hearing notices
11. Appellant's submissions (items A-I)
12. Fire Department Submissions (items A-V)

**E) Subsidiary Findings of Fact**

- 1) By written notice dated January 14, 2010 and received by the Appellant on January 14, 2010, the Town of Abington Fire Department issued an Order of Notice to the Appellant informing him of the provisions of M.G.L. c. 148, s. 26H, and the Department's determination to require the installation of automatic sprinklers in the Appellant's building, located at 96 Railroad Avenue, Abington, MA. An appeal of said Order was filed on January 28, 2010. The Board held a hearing on this matter on May 12, 2010, at the Department of Fire Services, Stow, Massachusetts.
- 2) On or about May 7, 1990, the Town of Abington adopted the provisions of M.G.L. c. 148, s. 26H, a local option law. This law requires the installation of a system of automatic sprinklers in certain lodging or boarding houses. Said section defines a lodging house or boarding house subject to said law, as a house where lodgings are "let to six or more persons not within the second degree of kindred to the person conducting it."
- 3) The Appellant testified that the property is a three-story home that dates back to the late 1800's. The building has been owned by the Appellant since approximately 1986. The Appellant testified that the first floor of the building features three (3) one-bedroom apartments. The second floor has two studio (*one room*) apartments and 3 single room apartments and the third floor has one four-room apartment. The Appellant indicated that 2 units on the second floor have kitchenettes while the other three units do not. The Appellant considered only the five dwelling units on the second floor as a lodging house. Three of the units on the second floor share a common bathroom.
- 4) The Appellant testified that the tenants in the first and third floor originally entered into one-year leases and are now tenants at will. He indicated that the tenants on the second floor are solicited through local newspapers and also have currently 1-year leases. Appellant indicated that all rents for tenants/boarders are due and payable on a monthly basis.

- 5) The Appellant indicated that in 2008, the entire building was upgraded to include new heating systems, water heater, chimney upgrade and electrical system. He also stated that each apartment also has a direct exit to the outside and that rooms on the second floor also have exits. The Appellant stated that in his efforts to prepare for the hearing, he received several sprinkler cost estimates. One of the estimates indicated that costs to install a sprinkler system were approximately \$51,750. He indicated that such a cost would create a significant financial hardship, particularly since he recently completed renovations in the building in 2008. At the hearing, concerns were also raised about the \$3,100.00 town connection fee
- 6) The Appellant stated that it is his opinion that the entire building is not a lodging house due to the fact that there are 2 apartments (one each on the first and third floors) and only 5 lodging rooms on the second floor. He reasoned that the number of "lodging individuals" is fewer than 6. He testified that he believed that prior to his ownership, the apartments on the first and third floors, may have been used and considered lodging units as part of a hotel or lodging house.
- 7) The Appellant stated that when he purchased the property in mid 1980's, it was already classified as a lodging house. He indicated that he has renewed the lodging house license each and every year since he purchased the building.
- 8) In support of the Abington Fire Department's position, Chief Pelland testified that the issuance of the Order of Notice was issued based upon the current classification and existence of a license to operate the building as a lodging house. He provided copies of the several past and present municipal licenses indicating that the building, known in the past as Badger's Boarding House, is a licensed as a legal lodging house. Copies of past and present Certificates of Inspection also indicate that said building is a lodging house. He also indicated that that number of persons who live in and pay rents for living space within the building is clearly within the numerical threshold, "six or more", which triggers sprinkler installation under s. 26H. The chief indicated that he believes that the building is considered "high hazard" due to the advanced age of the building, its balloon frame construction, and the number of individuals living in it.
- 9) The Chief indicated that he would consider an alternative or modified sprinkler system that provides an adequate level of "life safety" protection at a more affordable cost. However, the Appellant has not presented such alternative sprinkler plans to date.

**F) Ultimate Findings of Fact and Conclusions of Law**

- 1) The relevant portions of M.G.L. c. 148, s. 26H state: In any city or town which accepts the provisions of this section, every lodging house or boarding house shall be protected throughout with an adequate system of automatic sprinklers in accordance with the provisions of the state building code. For the purposes of said section, a lodging house or boarding house shall mean "a house where lodgings are let to six or more persons not within the second degree of kindred to the person conducting it..."
- 2) On or about May 7, 1990, the Town of Abington adopted the provisions of M.G.L. c. 148, s. 26H.

- 3) The building located at 96 Railroad Avenue, Abington, MA, has been for many years and is currently licensed by the Town of Abington to operate legally as a lodging home. The Appellant applied for and has renewed said license over the past years. The most recent license expires on December 31, 2010. The Certificate of Inspection also issued by the Town and submitted at the hearing also classified this structure as a “lodging home”.
- 4) Clearly, this house is capable of and does in fact currently have six or more persons living within the house on three separate floors and within nine (9) separate living units. Appellant’s explanation that he only operates a portion of this house (the second floor) as a lodging home to only five persons is without merit and is not consistent with other documentation and testimony which establishes the legal use and number of units and occupants of this building.
- 5) The building does not come within any of the enumerated statutory exemptions of M.G.L. c. 148, section 26H.
- 6) With respect to the Appellant’s installation cost concerns, particularly with the Town’s high connection fee, the Board notes that the statute requires that the “house shall be protected throughout with an *adequate system* of automatic sprinklers in accordance with the State Building Code”. The Board recommends that the parties consider the installation of an NFPA 13-R system which may prove more economical without sacrificing the ‘life safety’ intent of this enhanced statutory provision.

**G) Decision**

Based upon the aforementioned findings and reasoning, the Board hereby **upholds** the Order of the Abington Fire Department to install an adequate system sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s. 26H.

The Board hereby determines that an adequate system of sprinklers may consist of either an NFPA 13R or NFPA 13D system, subject to the approval of the Fire Department.

Plans for the installation of the referenced sprinkler system and the required alarm system shall be submitted to the Abington Fire Department within (90) ninety days from the date of this decision (September 27, 2010). The installation shall be completed within one year from the date of this decision (September 27, 2011). Additionally, the Board notes that it is concerned with the unusually high water connection fee that the Town apparently charges for the sprinkler system connection. Although the Board concedes that it is without jurisdiction to waive the fee, the Board suggests that the Town of Abington review the fee amount in order to encourage and facilitate the installation of sprinkler protection for reasons related to public safety.

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**H) Vote of the Board**

John Mahan, Chairman	In Favor
Maurice Pilette, Vice Chair	In Favor
Frank Kodzis, Boston Fire Marshal	In Favor
Thomas Coulombe	In Favor
Alexander MacLeod	In Favor
Aime DeNault	In Favor

**I) Right of Appeal**

You are hereby advised you have the right to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order, pursuant to section 14 of chapter 30A of the General Laws.

SO ORDERED,



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John Mahan, Chairman

Dated: June 29, 2010

**A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY CERTIFIED MAIL,  
RETURN RECEIPT TO:**

Charles Carchedi  
20 Sunny-Rock Drive  
Walpole, Massachusetts 02081

Chief Arthur H. Pelland  
Deputy Chief John A. Weckbacher, Jr.  
Abington Fire-Rescue and Emergency Services  
1040 Bedford Street  
Abington, Massachusetts 02351